

Attorney Docket: BHT/3143-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : DAVIDOV et al.
Application No. : 09/924,471
Filed : August 9, 2001
Title : LID HAVING INTEGRAL ONE-PIECE
EATING UTENSIL
Group Art Unit : 3727
Examiner : R. Hylton
Attorney Docket : BHT/3143-3

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TECHNOLOGY CENTER R3700

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 C.F.R. §1.181**

Sir:

The undersigned received a Notice of Abandonment mailed on November 26, 2003 in which the reason for abandonment was Applicant's failure to timely file a proper reply to an Office Letter mailed on November 27, 2002. A copy of the Notice of Abandonment is attached hereto as APPENDIX A. On the Notice of Abandonment, box 1b was checked, which states:

A proposed reply was received on May 27, 2003, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

Application No. 09/924,471

Applicant respectfully traverses this Holding for Abandonment. On May 27, 2003, the six-month deadline for responding to the Final Office Action mailed on November 27, 2002, the undersigned submitted an Amendment Under 37 C.F.R. §1.116, a Letter to the Official Draftsperson, a Notice of Appeal, and a check for the Extension of Time (Three Months) and the appeal fee. A copy of the receipt card bearing the date-stamp of the U.S. Patent and Trademark Office mail room is attached hereto as APPENDIX B.

Clearly, the response filed on May 27, 2003 constitutes a proper response to the Final Office Action of November 27, 2002 since it includes a Notice of Appeal and the requisite appeal fee.

An Advisory Action mailed on June 4, 2003 indicated that the Notice of Appeal was, in fact, filed on May 27, 2003, and also indicated that the proposed amendment would not be entered. A copy of the Advisory Action is attached hereto as APPENDIX C.

On November 24, 2003, Applicant submitted a Request for Continued Examination (RCE), a Petition for a Four-Month Extension of Time, and a check for the RCE filing fee and the extension fee. Copies of the documents submitted on November 24, 2003, including the receipt card bearing the date-stamp of the U.S. Patent and Trademark Office is attached hereto as APPENDIX D.

It is submitted that the Notice of Appeal, along with the appeal fee, as well as the RCE and the requisite fees were timely submitted and that the Notice of Abandonment was issued in error. It is requested that the Holding of Abandonment be withdrawn and this application returned to pending status.

Respectfully submitted,

Date: February 5, 2004

By:


Bruce H. Troxell
Reg. No. 26,592

Troxell Law Office PLLC
5205 Leesburg Pike, Suite 1404
Falls Church, Virginia 22041
Telephone: 703 575-2711
Telefax: 703 575-2707



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/24,471	08/09/2001	Theodore Davidov	BIT-3143-3	2649

7590

11/26/2003

DOUGHERTY & TROXELL
 SUITE 1404
 5205 LEESBORO PIKE
 FALLS CHURCH, VA 22041

EXAMINER

HYLTON, ROBIN A.

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

APPENDIX A
(2 Pages)

Notice of Abandonment

Application No.

09/924,471

Applicant(s)

Davidov et al

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on Nov 27, 2002.

(a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.

- (b) ☒ A proposed reply was received on May 27, 2003, but it does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection.

(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).

(c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).

(d) ☐ No reply has been received.

2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).

(a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).

(b) ☐ The submitted issue fee of \$ _____ is insufficient. A balance of \$ _____ is due.

The issue fee required by 37 CFR 1.18 is \$ _____. The publication fee, if required by 37 CFR 1.18(d) is \$ _____.

(c) ☐ The issue fee and publication fee, if applicable, has not been received.

3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).

(a) ☐ Proposed new formal drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.

(b) ☐ No corrected drawings have been received.

4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

6. ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

7. ☐ The reason(s) below:

ROBIN A. HYLTON
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Appeal Brief Due 7-27-03
Appeal Brief Deadline 11-27-03

CLIENT: CODA
Due Date: May 27, 2003

Attorney Docket: BHT/3143-3
Initials: BHT/mg

Applicant : DAVIDOV et al.
Application No. : 09/924,471
Filed : August 9, 2001
Title : LID HAVING INTEGRAL ONE-PIECE
EATING UTENSIL
Group Art Unit. : 3727
Examiner : R. Hylton
Docket No. : 3143-3



Transmitted herewith for filing are the following:

1. TRANSMITTAL COVER SHEET.
2. AMENDMENT UNDER 37 CFR § 1.116 - in response to the Final Office Action of November 27, 2002.
3. NOTICE OF APPEAL.
4. Petition for Three-Month Extension of Time.
5. LETTER TO THE OFFICIAL DRAFTSPERSON, along with One (1) sheet of new formal drawings (FIGS. 1-4).
6. Check No. 7635 for \$625 (extension \$465; appeal \$160).

Receipt is hereby acknowledged by the U.S. Patent and Trademark Office of the above-identified papers.

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APPENDIX B



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER OF PATENTS AND TRADEMARKS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,471	08/09/2001	Theodore Davidov	BIT-3143-3	2649

7590

06/04/2003

DOUGHERTY & TROXELL
 SUITE 1404
 5205 LEEBURG PIKE
 FALLS CHURCH, VA 22041

EXAMINER

HYLTON, ROBIN ANNETTE

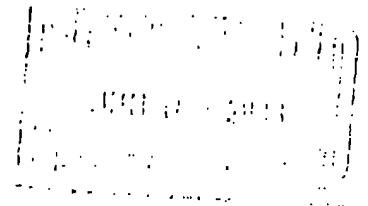
ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



APPENDIX C
 (2 Pages)

Advisory Action

Application No.

09/924,471

Applicant(s)

DAVIDOV ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY (check either a) or b))

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 27 May 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☒ The proposed amendment(s) will not be entered because:
 (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

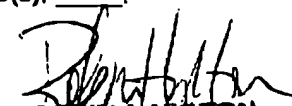
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: 1,2,4-9 and 11-15.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
 10. ☐ Other: _____


 ROBIN A. HYLTON
 PRIMARY EXAMINER

(14)

/C 8-24-04

CLIENT: CODA
Due date: November 27, 2003

Attorney Docket: 3143-3
Initials: BHT/mg

Applicant : DAVIDOV

Application No. : 09/924,471

Filed : August 9, 2001

Title : LID HAVING INTEGRAL ONE-PIECE EATING UTENSIL

Group Art Unit : 3727

Examiner : R. Hylton

Docket No. : 3143-3



Transmitted herewith for filing are the following:

1. TRANSMITTAL COVER SHEET.
2. Request for Continued Examination (RCE) Transmittal (Original and Duplicate).
3. Petition for Four-Month Extension of Time.
4. Check No. 8736 for \$1,125 (filing fee \$385; extension fee \$740).

Receipt is hereby acknowledged by the U.S. Patent & Trademark Office of the above-identified papers.

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TECHNOLOGY CENTER R3700

APPENDIX D
(4 Pages)

BOX RCE
EXPEDITED PROCEDURE
GROUP ART UNIT 3727
Attorney Docket No.: 3143-3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : DAVIDOV
Application No. : 09/924,471
Filed : August 9, 2001
Title : LID HAVING INTEGRAL ONE-PIECE EATING
UTENSIL
Group Art Unit : 3727
Examiner : R. Hylton
Docket No. : 3143-3

MAIL STOP RCE

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL COVER SHEET

Sir:

Transmitted herewith for filing are the following:

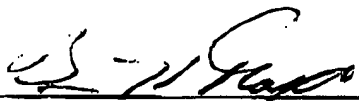
1. Request for Continued
Examination (RCE) Transmittal (Original and Duplicate).
2. Petition for Four-Month Extension of Time.
3. Check for \$1,125 (filing fee \$385; extension fee \$740).

The Commissioner is hereby authorized to charge any additional fees which
may be required for the filing of this document to **Deposit Account No. 501874.**

Respectfully submitted,

Date: November 24, 2003

By:


Bruce H. Troxell
Reg. No. 26,592

TROXELL LAW OFFICE PLLC
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Troxell Law Office PLLC

5205 LEESBURG PIKE
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FALLS CHURCH, VIRGINIA 22041

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FAX (703) 575-2707

BRUCE H. TROXELL

JOHN R. GUICE JR.

TECHNOLOGY CENTER R3700

MEMBER OF BAR OF OTHER STATES

I hereby certify that this correspondence is being facsimile transmitted to the
United States Patent and Trademark Office. Fax No. **(703) 305-8755 or**
(703) 305-4372 on February 5, 2004.


Jane L. Fallgren (signature)

The Commissioner is hereby authorized to charge any fees
which may be required for the filing of this document to Deposit
Account No. 501874.

FACSIMILE COMMUNICATION

TO: COMMISSIONER OF PATENTS FROM: Bruce H. Troxell
MAIL STOP - Issue Fee

DATE: February 5, 2004 PAGE: 1 of 12

RE: U.S. Patent Application - DAVIDOV et al.
Serial No.: 09/924,471
Filed: August 9, 2001
Title: LID HAVING INTEGRAL ONE-PIECE EATING UTENSIL
Attorney Docket No.: BHT-3143-3

XX
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party named as addressee. No one else is entitled to read, use, copy or disseminate this communication or the information contained
herein. If you are not the addressee (or the addressee's employee, agent or legal representative), contact us immediately by telephone
or facsimile and arrangements will be made for the return to us of this communication. Thank you.

XX

MESSAGE:

Transmitted herewith are the following documents in connection with
above-identified application:

1. PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181;
and
2. APPENDICES A, B, C and D.

Thank you very much for your assistance in this matter.

IF TRANSMISSION IS NOT COMPLETE
PLEASE CALL 703/575-2711 OR FAX 703/575-2707